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**FILED**  
LOS ANGELES SUPERIOR COURT

JUN 21 2010

JOHN A. CLARKE, CLERK

BY ERIN SAN ANGELES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

12 TRACIE RICE,

13 Plaintiff,

14 vs.

15 LINDSAY LOHAN, an individual, and DOES  
16 1 through 10, inclusive,

17 Defendants.

) Case No. SC 094931  
) Date of Hearing: July 7, 2010  
) Time of Hearing: 9:00 AM\*  
) Judge: Stone  
) Dept: X  
) Date of Filing: June 21, 2010  
) Trial Date: July 26, 2010

) **MOTION IN LIMINE TO  
) ESTABLISH FINDINGS OF FACT  
) ABOUT COCAINE USE AND  
) POSSESSION BY DEFENDANT  
) LOHAN ON THE NIGHT OF THE  
) INCIDENT OR IN THE  
) ALTERNATIVE PRECLUDE  
) DEFENDANT FROM  
) TESTIFYING ABOUT DRUG USE  
) AND POSSESSION ON THE  
) NIGHT OF THE INCIDENT AND  
) STRIKE HER PREVIOUS  
) TESTIMONY ON THIS ISSUE**

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3 **TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**  
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5 PLEASE TAKE NOTICE THAT Plaintiff Tracie Rice hereby moves this Court for an order  
6 establishing the following findings of fact about Defendant Lindsay Lohan's use and possession of  
7 cocaine on the night of the incident which forms the basis of this case: (1). Ms. Lohan was under  
8 the influence of cocaine on the night of the incident; (2). the substance found in a packet in Ms.  
9 Lohan's jeans was discovered to be cocaine by the LA Sheriff's Department Science Laboratory;  
10 (3). Ms. Lohan admits that the cocaine in her jeans on the night of the incident did not belong to  
11 Tarin Graham or any other person besides Ms. Lohan herself; (4). Ms. Lohan's urine sample taken  
12 on the night of the incident was analyzed by the LA Sheriff's Department Science Laboratory and  
13 found to contain two types of cocaine.  
14

15 In the alternative, Plaintiff moves for an order that Defendant Lohan not be allowed to  
16 testify that she was not intoxicated on cocaine on the night of this incident or claim that she did not  
17 ingest or possession cocaine on that night. Plaintiff Tracie Rice further moves this Court to  
18 instruct Defendant, and require her to advise all witnesses:

- 19 (1) Not to attempt to convey to the jury, directly or indirectly, any of the facts mentioned in  
20 this Motion without first obtaining permission of the Court outside the presence and  
21 hearing of the jury;  
22 (2) Not to make any reference to the fact that this Motion has been filed; and  
23 (3) To warn and caution each of Defendant's witnesses to strictly follow the same  
24 instructions.

25 This motion is based upon the grounds that plaintiff asserted her Fifth Amendment privilege  
26 against self-incrimination at her deposition to avoid answering questions about her drug use and  
27 possession the night of the incident, questions which are crucial to the determination of this case,  
28

1 and this Court should prevent Defendant from gaming the civil system through strategic use of the  
2 Fifth Amendment by levying evidentiary sanctions against her in the form of admitted facts or the  
3 preclusion of testimony; and is based on the supporting Memorandum of Points and Authorities,  
4 the pleadings and papers on file in this action, and upon such argument and evidence as may be  
5 presented prior to or at the hearing of this matter.

6 Date: June 21, 2010  
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10 MEMORANDUM OF POINTS AND AUTHORITIES

11 1.

12 PRELIMINARY STATEMENT

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14 On July 24, 2010, Defendant Lindsay Lohan was arrested by the Santa Monica Police  
15 Department ("SMPD") after car-chasing Plaintiff Tracie Rice at high speeds through Santa  
16 Monica, endangering Plaintiff's life and terrifying her. The SMPD arrested her for reckless driving  
17 and driving under the influence, performed a sobriety test, and determined Ms. Lohan was  
18 intoxicated. Ms. Lohan's B.A.C. test showed she was under the influence. She was prosecuted for  
19 possession of cocaine after a packet of a white substance found in her pocket was tested by the Los  
20 Angeles Sheriff's Department and found to be cocaine and for being under the influence of cocaine  
21 when a sample of her urine tested by the Los Angeles Sheriff's Department was shown to contain  
22 two types of cocaine. Ms. Lohan pled to counts of reckless driving, being under the influence of a  
23 controlled substance, possession, and driving under the influence on August 24, 2007. A true and  
24 correct copy of her pleas are attached to the Declaration of Victoria Don as Exhibit "A." <sup>1/</sup>  
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26  
27 1. This motion is limine is brought before the hearing on Plaintiff Rice's motion to compel  
28 further answers from Ms. Lohan concerning these questions under the theory that Ms. Lohan does not  
have the reasonable fear that she will be prosecuted necessary to invoke the Fifth Amendment as a shield  
in civil proceedings. (*Blackburn v. Superior Court* (1993) 21 Cal.App.4th 414, 427 (a witness  
3.

**MOTION IN LIMINE TO ESTABLISH FINDINGS OF FACT ABOUT COCAINE USE AND  
POSSESSION BY DEFENDANT LOHAN ON THE NIGHT OF THE INCIDENT**

1 On May 4, 2010, Plaintiff Tracie Rice took Defendant Lohan's deposition. Despite having  
2 already been prosecuted and sentenced for her drug use and possession on the night of the incident  
3 Defendant Lindsay Lohan refused to answer any questions about her drug use or possession on the  
4 night of the incident by asserted her Fifth Amendment privilege against self-incrimination. A true  
5 and correct copy of the relevant deposition pages are attached to the Don Declaration as Exhibit  
6 "B."

7 Defendant Lindsay Lohan should not be permitted to game the civil system and obstruct  
8 Plaintiff Tracie Rice's access to a fair trial by refusing to answer questions which are central to this  
9 case, in which Plaintiff Tracie Rice seeks recompense and punitive damages for the emotional  
10 distress caused by Ms. Lohan's reckless behavior. Knowledge about Ms. Lohan's state of mind  
11 and intoxication are key to the jury's understanding of her mental state and the recklessness of her  
12 behavior on the night of the incident. Moreover, Defendant Lohan's reckless driving, driving  
13 under the influence and overall reckless behavior leading up to and during this car chase is the  
14 central issue in this case.

15 A civil defendant's must either waive the privilege of the Fifth Amendment or accept the  
16 civil consequences of silence. Plaintiff Tracie Rice seeks, by this motion, an order establishing the  
17 follow findings of fact against Defendant Lohan: (1). Ms. Lohan was under the influence of  
18 cocaine on the night of the incident; (2). the substance found in a packet in Ms. Lohan's jeans was  
19 discovered to be cocaine by the LA Sheriff's Department Science Laboratory; (3). Ms. Lohan  
20 admits that the cocaine in her jeans on the night of the incident did not belong to Tarin Graham or  
21 any other person besides Ms. Lohan herself; (4). Ms. Lohan's urine sample taken on the night of  
22 the incident was analyzed by the LA Sheriff's Department Science Laboratory and found to contain  
23 two types of cocaine. In the alternative, Plaintiff seeks an order by the Court precluding Lindsay  
24

25  
26  
27 must have a reasonable fear of criminal prosecution in order to assert the Fifth Amendment in a  
28 civil case). If the Court has ordered Ms. Lohan to respond further than this motion may well be  
superseded by the Court's ruling and Plaintiff would withdraw the motion.

1 Lohan from testifying at trial that she did not use or possess cocaine on the night of the incident or  
2 to claim that she did not ingest or possess cocaine on the night of the incident.

3 **A. EVIDENCE ABOUT DEFENDANT LOHAN'S COCAINE USE AND POSSESSION ON**  
4 **THE NIGHT OF THE INCIDENT ARE CENTRAL TO THE ISSUES OF THIS CASE**

5 The issue of Defendant Lohan's cocaine use and possession the night of the incident goes  
6 directly to the heart of Plaintiff Rice's legal claims that Defendant Lohan assaulted her, behaved  
7 negligently in causing her serious danger and emotional harm, intentionally inflicted emotional  
8 distress on her, and seriously interfered with her rights to move freely and be safe from violence.  
9 Lohan's use and possession of cocaine make it more likely that Ms. Lohan acted recklessly and  
10 dangerously toward Plaintiff in becoming intoxicated on illegal drugs and deciding to not only  
11 drive but also chase Plaintiff at high speeds until Plaintiff managed to flee and escape to the Santa  
12 Monica Police Station. Furthermore, this issue is core to Plaintiff's claim of punitive damages, as  
13 the use and possession shed light on Defendant Lohan's mental state of being intoxicated on  
14 cocaine at the time of the incident and make it more likely that she acted towards Plaintiff with  
15 fraud, malice, and oppression.

16  
17 **B. AS A CIVIL DEFENDANT, LOHAN MUST EITHER WAIVE HER FIFTH**  
18 **AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION OR ACCEPT THE**  
19 **CONSEQUENCES OF HER SILENCE.**

20  
21 California law provides for evidentiary sanctions to prevent a party to a civil lawsuit  
22 from obstructing a fair trial or use of the Fifth Amendment privilege to gain an advantage in  
23 litigation. In a civil proceeding, a witness or party may be required to waive the privilege or  
24 accept the civil consequences of silence. *Brown v. United States* 356 U.S. 148, 155-156 (1958);  
25 *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 116. Furthermore, "the fact that a man is  
26 indicted cannot give him a blank check to block all civil litigation on the same or related  
27 underlying subject matter." *Avant! Corp. v. Superior Court*, (20June 21, 201000) 79 Cal. App. 4th  
28 876, 882 (quoting *People v. Coleman* (1975) 13 Cal. 3d 876, 886). Defendant Lohan is attempting



1 to use her own criminal acts as just such a blank check in order to avoid admitting prejudicial but  
2 relevant information about her drug use and possession on the night of the incident.

3 Should Ms. Lohan not answer these questions, an adverse inference may be drawn from her  
4 claim of the self-incrimination privilege in a civil case. *Fross v. Wotton* (1935) 3 Cal.2d 384, 395;  
5 *Save A Lot v. Workers' Compensation Appeals Bd.*, 69 Cal. Comp. Cas 337 (Cal. App. 5<sup>th</sup> Dist.  
6 2004); *Fuller v. Superior Court*, 87 Cal. App. 4th 229, 306 (Cal. App. 2d Dist. 2001); *Klein v.*  
7 *Superior Court*, 198 Cal. App. 3d 894, 915 (Cal. App. 6th Dist. 1988). This is also the rule  
8 generally established by the Supreme Court and in other jurisdictions in cases stating that the Fifth  
9 Amendment does not forbid adverse inferences against parties to civil actions when they refuse to  
10 testify. *Baxter v. Palmigiano*, 425 U.S. 308, 318, (1976); *Mitchell v. U.S.* 526 U.S. 314 (1999);  
11 *S.E.C. v. Caramadre*, 2010 WL 2380734, 3 (D.R.I. 2010); *In re Alstom SA*  
12 454 F.Supp.2d 187, 208 n. 17 (S.D.N.Y. 2006); *S.E.C. v. Merrill Scott & Associates, Ltd.*, 505  
13 F.Supp.2d 1193, 1212 n. 15 (D.Utah 2007) citing *Baxter v. Palmigiano*, 425 U.S. 308, 96 S.Ct.  
14 1551, 47 L.Ed.2d 810, (1976); *Antonio v. Security Services of America, LLC* 2010 WL 1266729, 27  
15 (D.Md.,2010.); McCormick on Evidence, Title 6. Privilege: Constitutional Chapter 13. The  
16 Privilege Against Self-Incrimination § 136; 91 YLJ 1062, 1111, Yale Law Journal, "The  
17 Conjuror's Circle—The Fifth Amendment Privilege in Civil Cases (1982).

18  
19 Should Ms. Lohan continue to assert the Fifth Amendment to avoid answer questions about  
20 her drug use and possession on the night of the incident, then findings of fact should be entered in  
21 this case that (1). Ms. Lohan was under the influence of cocaine on the night of the incident; (2).  
22 Ms. Lohan admits that the cocaine in her jeans on the night of the incident did not belong to Tarin  
23 Graham or any other third party; (3). Ms. Lohan was found with cocaine in her jeans when arrested  
24 by the police; (4). the substance found in a packet in Ms. Lohan's jeans was discovered to be  
25 cocaine by the LA Sheriff's Department Science Laboratory; (5). Ms. Lohan's urine sample taken  
26 on the night of the incident was analyzed by the LA Sheriff's Department Science Laboratory and  
27 found to contain two types of cocaine.

1 In the alternative, Defendant Lohan should be precluded from testifying at trial that she did  
2 not use or possess cocaine on the night of the incident and Plaintiff should be permitted to argue to  
3 the jury that she has not denied cocaine use or possession. She should be precluded from  
4 "blow[ing] hot and cold" by first claiming the constitutional privilege against self-incrimination,  
5 and then testifying at trial on these matters. *A & M Records, Inc. v. Heilman*, 75 Cal. App. 3d 554,  
6 566. (1977). The Court is also entitled to strike her previous testimony on this issue. *Alvarez v.*  
7 *Sanchez* (1984) 158 Cal.App.3d 709, 713.

### 8 9 CONCLUSION

10 Based on the foregoing, Plaintiff Tracie Rice respectfully requests that this Court enter an  
11 order establishing findings of fact that (1). Ms. Lohan was under the influence of cocaine on the  
12 night of the incident; (2). the substance found in a packet in Ms. Lohan's jeans was discovered to  
13 be cocaine by the LA Sheriff's Department Science Laboratory; (3). Ms. Lohan admits that the  
14 cocaine in her jeans on the night of the incident did not belong to Tarin Graham or any other  
15 person besides Ms. Lohan herself; (4). Ms. Lohan's urine sample taken on the night of the incident  
16 was analyzed by the LA Sheriff's Department Science Laboratory and found to contain two types  
17 of cocaine or, in the alternative, preclude Defendant Lohan from testifying on this issue or denying  
18 that she ingested or possessed cocaine on the night in question and strike her previous testimony on  
19 this issue.

20 DATED: June 21, 2010

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23 Victoria Don

24 Attorney for Plaintiff Tracie Rice

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 723 Ocean Front Walk, Venice, California 90291.

On **June 21, 2010**, I served the foregoing document described as:

**MOTION IN LIMINE TO ESTABLISH FINDINGS OF FACT ABOUT COCAINE USE AND POSSESSION BY DEFENDANT LOHAN ON THE NIGHT OF THE INCIDENT OR IN THE ALTERNATIVE PRECLUDE DEFENDANT FROM TESTIFYING ABOUT DRUG USE AND POSSESSION ON THE NIGHT OF THE INCIDENT AND STRIKE HER PREVIOUS TESTIMONY ON THIS ISSUE**

on all interested parties in this action by placing \_\_\_\_ an original or **X** a true copy thereof enclosed in sealed envelopes addressed as follows:

Edwin F. McPherson  
McPherson Rane LLP  
1801 Century Park East  
24<sup>th</sup> Floor  
Los Angeles, CA 90067  
Fax: (310) 553-9233

Randall Billington  
17100 Gillette Avenue, Suite 137  
Irvine, CA 92614  
(951) 544-6560 tel  
(951) 346-5588 fax

**X** **[PERSONAL DELIVERY]** I caused the foregoing document to be personally served on the interested party.

**X** **[BY FAX]** I transmitted said document to the above fax number(s).  
(To Randall Billington Only)

**X** **[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 21, 2010, at Venice, California.

  
Jonathan A. Cotton